

# STATE OF COLORADO

Roy Romer, Governor  
Patti Shwayder, Acting Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Colorado Department  
of Public Health  
and Environment

RECEIVED

January 26, 1996

FEB - 2 1996

OFFICE OF THE  
ATTORNEY GENERAL  
NATURAL RESOURCES SECTION

Mr. Wayne Webster, President  
Rico Development Corporation  
# 5 Pan American Ave.  
Paonia, CO 81428

CERTIFIED MAIL NO.: P 319 472 223

David L. Sell  
McMichael, Burlingame, Multz & Lipton  
1580 Lincoln St., Ste. 900  
Denver, Co 80203

CERTIFIED MAIL NO.: P 319 472 224

Virginia A. Sell, Secretary-Treasurer  
Rico Development Corporation  
8127 E. Adel Capitan Dr.  
Scottsdale, AZ 85258

CERTIFIED MAIL NO.: P 319 472 225

RE: Notice of Violation and Cease and Desist Order  
Rico Development Corporation  
CDPS Permit No.: CO-0029793  
Dolores County, Colorado

Dear Mr. Webster, Mr. Sell, and Ms. Sell:

Enclosed is a signed copy of the Notice of Violation and Cease and Desist Order issued in this matter. The basis for the notice is defined under the Findings of Fact.

This action could result in the imposition of civil penalties by the Department as provided by 25-8-608, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.). The maximum civil penalty allowed by the statute is \$10,000 per day of violation.

Should you have any questions, please contact this office at (303) 692-3590.

Rico Development Corporation

CO-0029793

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Sincerely,



Robert J. Shukle, Chief

Permits and Enforcement Section

WATER QUALITY CONTROL DIVISION

RS/ks

cc: Karen A. Kishbaugh, Attorney General's Office  
West Slope Unit, Field Support Section, WQCD  
EPA, Region VIII  
Local Health Department  
MS-3

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

STATE OF COLORADO

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NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

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IN THE MATTER OF:     RICO DEVELOPMENT CORPORATION  
                             CDPS PERMIT NO. CO-0029793  
                             DOLORES COUNTY, COLORADO

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TO:    Wayne E. Webster, Virginia Sell, David L. Sell, and Rico Development Corporation

Pursuant to the authority vested in the Division of Administration of the Colorado Department of Public Health and Environment ("the Division") by 25-8-301 to 308, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), which authority has been delegated to me by the Executive Director of the Department, I hereby make the following Findings of Fact and issue the following Notice of Violation and Cease and Desist Order:

FINDINGS OF FACT

1. Rico Development Corporation ("RDC") owns and operates the St. Louis Tunnel mine and mill site, which is an inactive, underground metals mine and mill ("the site") located near Rico, Colorado.
2. The site is the subject of Colorado Discharge System Permit No. CO-0029733 ("the permit"), which was renewed effective on February 1, 1994, and is scheduled to expire on January 31, 1999.
3. Under the terms and conditions of the permit, wastewater associated with the St. Louis Tunnel is authorized to be discharged, following treatment, from Outfall 002 into the Dolores River.
4. Pursuant to the requirements of the permit, RDC is required to sample and analyze the effluent being discharged at Outfall 002 at least weekly, with the exception of Total Dissolved Solids and Whole Effluent Toxicity Testing which are required quarterly. RDC submitted monthly Discharge Monitoring Reports ("DMRs") and analytical data to the Division regarding the levels of pollutants in the effluent which included the following data:

Reporting Period	Pollutant	Reported Concentration	Permit Limit
12/93	Total Recoverable Lead, 30-day avg.	0.013 mg/l	0.009 mg/l
12/93	Total Recoverable Lead, daily max.	0.02 mg/l	0.018 mg/l
1/94	Total Recoverable Lead, 30-day avg.	0.014 mg/l	0.009 mg/l
1/94	Total Recoverable Lead, daily max.	0.02 mg/l	0.018 mg/l
7/94	Total Recoverable Lead, 30-day avg.	0.065 mg/l	0.0099 mg/l
1/94	Total Recoverable Silver, 30-day avg.	0.0113 lbs/day	0.0081 lbs/day
1/94	Total Recoverable Silver, daily max.	0.022 lbs/day	0.016 lbs/day
10/95	Total Recoverable Silver, 30-day avg.	0.0055 mg/l	0.0001 mg/l
3/94	Total Recoverable Zinc, 30-day avg.	1.63 mg/l	0.44 mg/l
3/94	Total Recoverable Zinc, daily max.	2.03 mg/l	0.88 mg/l
5/94	Total Recoverable Zinc, 30-day avg.	0.61 mg/l	0.44 mg/l
5/94	Total Recoverable Zinc, daily max.	0.91 mg/l	0.88 mg/l
3/95	Total Recoverable Zinc, 30-day avg.	0.95 mg/l	0.237 mg/l
4/95	Total Recoverable Zinc, 30-day avg.	0.57 mg/l	0.237 mg/l
5/95	Total Recoverable Zinc, 30-day avg.	0.75 mg/l	0.237 mg/l
6/95	Total Recoverable Zinc, 30-day avg.	7.02 mg/l	0.237 mg/l
7/95	Total Recoverable Zinc, 30-day avg.	2.85 mg/l	0.237 mg/l
8/95	Total Recoverable Zinc, 30-day avg.	0.282 mg/l	0.237 mg/l
9/95	Total Recoverable Zinc, 30-day avg.	0.37 mg/l	0.237 mg/l
10/95	Total Recoverable Zinc, 30-day avg.	0.275 mg/l	0.237 mg/l
10/94	Total Recoverable Cadmium, daily max.	0.02 mg/l	0.007 mg/l
3/95	Total Recoverable Cadmium, 30-day avg.	0.003 mg/l	0.0004 mg/l
4/95	Total Recoverable Cadmium, 30-day avg.	0.0035 mg/l	0.0004 mg/l
5/95	Total Recoverable Cadmium, 30-day avg.	0.0065 mg/l	0.0004 mg/l
6/95	Total Recoverable Cadmium, 30-day avg.	0.045 mg/l	0.0004 mg/l
7/95	Total Recoverable Cadmium, 30-day avg.	0.0125 mg/l	0.0004 mg/l

9/95	Total Recoverable Cadmium, 30-day avg.	0.0025 mg/l	0.0004 mg/l
6/94	Total Recoverable Copper, 30-day avg.	0.032 mg/l	0.03 mg/l
3/94	pH, maximum	9.08 s.u.	9.0 s.u.
1 <sup>st</sup> Qtr.94	Chronic Whole Effluent Toxicity Testing, <i>ceriodaphnia dubia</i> , min. effluent concentration with a statistically significant difference in mortality from the control	24.3 %	> 25 %

5. The permit requires that RDC sample and analyze the effluent discharged from Outfall 002 at specific frequencies for each pollutant. RDC submitted monthly reports and correspondence to the Division indicating effluent discharged from Outfall 002 during the periods listed in the table below. The submittals reported the frequencies of analysis ("FOA") for pollutants in the effluent, including the following data:

Reporting Period	Parameter	Reported FOA	Required FOA
3/94	Total Suspended Solids	2/31	weekly (min. 4/mo.)
3/94	Total Recoverable Silver	2/31	weekly (min. 4/mo.)
3/94	Total Recoverable Zinc	2/31	weekly (min. 4/mo.)
3/94	Total Recoverable Cadmium	2/31	weekly (min. 4/mo.)
3/94	Total Recoverable Lead	2/31	weekly (min. 4/mo.)
3/94	Total Recoverable Copper	2/31	weekly (min. 4/mo.)
4/94	Total Suspended Solids	3/30	weekly (min. 4/mo.)
4/94	Total Recoverable Silver	3/30	weekly (min. 4/mo.)

4/94	Total Recoverable Zinc	3/30	weekly (min. 4/mo.)
4/94	Total Recoverable Cadmium	3/30	weekly (min. 4/mo.)
4/94	Total Recoverable Lead	3/30	weekly (min. 4/mo.)
4/94	Total Recoverable Copper	3/30	weekly (min. 4/mo.)
8/94	Total Suspended Solids	3/30	weekly (min. 4/mo.)
8/94	Total Recoverable Silver	3/30	weekly (min. 4/mo.)
8/94	Total Recoverable Zinc	3/30	weekly (min. 4/mo.)
8/94	Total Recoverable Cadmium	3/30	weekly (min. 4/mo.)
8/94	Total Recoverable Lead	3/30	weekly (min. 4/mo.)
8/94	Total Recoverable Copper	3/30	weekly (min. 4/mo.)
9/94	Total Suspended Solids	2/30	weekly (min. 4/mo.)
9/94	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
9/94	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
9/94	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
9/94	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
9/94	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
3 <sup>rd</sup> Qtr94	Total Dissolved Solids	0/90	quarterly

10/94	Total Suspended Solids	2/30	weekly (min. 4/mo.)
10/94	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
10/94	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
10/94	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
10/94	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
10/94	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
11/94	Total Suspended Solids	2/30	weekly (min. 4/mo.)
11/94	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
11/94	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
11/94	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
11/94	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
11/94	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
11/94	pH	1/30	daily
11/94	Flow	1/30	daily
11/94	Oil and Grease, Visual	1/30	daily
12/94	Total Suspended Solids	2/30	weekly (min. 4/mo.)
12/94	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
12/94	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)

12/94	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
12/94	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
12/94	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
12/94	Flow	2/30	daily
4 <sup>th</sup> Qtr94	Total Dissolved Solids	0/90	quarterly
1/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
1/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
1/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
1/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
1/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
1/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
2/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
2/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
2/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
2/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
2/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
2/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)



3/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
3/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
3/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
3/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
3/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
3/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
1 <sup>st</sup> Qtr95	Total Dissolved Solids	0/90	quarterly
4/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
4/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
4/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
4/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
4/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
4/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
5/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
5/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
5/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
5/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)

5/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
5/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
6/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
6/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
6/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
6/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
6/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
6/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
2 <sup>nd</sup> Qtr95	Total Dissolved Solids	0/90	quarterly
7/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
7/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
7/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
7/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
7/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
7/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
8/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
8/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)

8/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
8/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
8/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
8/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
9/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
9/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
9/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
9/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
9/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
9/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)
3 <sup>rd</sup> Qtr95	Total Dissolved Solids	0/90	quarterly
10/95	Total Suspended Solids	2/30	weekly (min. 4/mo.)
10/95	Total Recoverable Silver	2/30	weekly (min. 4/mo.)
10/95	Total Recoverable Zinc	2/30	weekly (min. 4/mo.)
10/95	Total Recoverable Cadmium	2/30	weekly (min. 4/mo.)
10/95	Total Recoverable Lead	2/30	weekly (min. 4/mo.)
10/95	Total Recoverable Copper	2/30	weekly (min. 4/mo.)

6. In Part I.A.3.b)(iv), the permit requires RDC to report noncompliance with daily maximum permit limitations for the metals denoted in Part I.B.1 of the permit orally within twenty-four (24) hours from the time the permittee becomes aware of the noncompliance, and mail a written report to the Division within five (5) days.

7. For the six daily maximum metals violations cited in paragraph 4 above, the Division received no oral or written noncompliance reports.

8. In Part II.A.3.c), the permit requires RDC to submit noncompliance reports to the Division with their DMRs whenever permit noncompliance not requiring 24-hour notification occurs.

9. In letters from the Division to RDC dated March 22, 1994; July 7, 1994; August 15, 1994; December 23, 1994; May 5, 1995; June 9, 1995; August 11, 1995; August 22, 1995; November 15, 1995; and December 12, 1995, the Division requested noncompliance notification, and specifically "what actions or measures [RDC] have or will be taking to abate this condition," for the reported violations cited in these letters. These reported violations occurred in January, May, June, August, September, October, November, and December 1994, and February, April, May, June, July, and September 1995.

10. As of the date of this NOV&CDO, no noncompliance notifications have been received for the reported violations listed in paragraphs 8 and 9, or for any violations reported on the DMRs and/or cited in this NOV&CDO since January 1994.

11. The permit requires quarterly chronic Whole Effluent Toxicity ("WET") testing of effluent from Outfall 002. RDC submitted CDPS WET Test Report Forms with the quarterly DMR to the Division which indicated a First Quarter, 1994, failure of the chronic WET test for *ceriodaphnia dubia*. Although an  $LC_{50}$  of 25% was reported on the DMR, the attached lab report showed the  $LC_{50}$  was 24.3%, both of which are test failures.

12. In Part I.B.3.(b), the permit requires chronic WET test failures and the selected "Automatic Compliance Schedule" response to be reported to the Division in writing within 21 days of demonstration of the toxicity.

13. In a letter to RDC dated May 25, 1994, the Division pointed out RDC's First Quarter, 1994, WET reporting error described in paragraph 11 and reminded RDC of the permit requirements in paragraph 12.

14. The First Quarter, 1994, WET tests were completed by April 7, 1994, but the

Division was not notified of the failure until receipt of the DMR on May 6, 1994, and has not been notified of the selected response as of the date of this Notice of Violation and Cease and Desist Order ("NOV&CDO").

15. In Part I.B.3.(d), the permit requires RDC to complete a Preliminary Toxicity Investigation/Toxicity Identification Evaluation ("PTI/TIE") within 120 days of the initial demonstration of toxicity or 120 days from the date accelerated WET testing demonstrates a pattern of toxicity, with a status report provided to the Division at the 30, 60, and 90-day points of the PTI/TIE. The permit further requires RDC to develop and submit a control program for elimination of the toxicity within 90 days of toxicant determination or no later than 210 days after toxicity demonstration.

16. As of the date of this NOV&CDO, no PTI/TIE or accelerated WET testing results due by August 7, 1994; status reports due by May 7, June 7, and July 7, 1994; or control programs due by November 7, 1994, relative to the First Quarter, 1994, chronic WET test failure have been received by the Division.

17. In Part I.B.2, the permit requires RDC to report compliance data to the Division on DMRs on a monthly basis, with the exception of WET testing which is required quarterly. DMRs are due to the Division by the 28th day of the month following the close of the monitoring period.

18. In letters from the Division to RDC dated May 6, 1994; June 6, 1994; November 10, 1994; February 10, 1995; and April 14, 1995, the Division reminded RDC of its responsibility to submit DMRs as required by the permit and indicated which reports had not been received by the Division.

19. As of the date of this NOV&CDO, the Division has not received DMRs for Outfall 002 reporting routine monitoring for February 1994, and reporting WET results for the second, third, and fourth quarters of 1994 and the first, second, and third quarters of 1995. RDC has not responded in any way to the letters listed in item 18.

20. In Part I.E.1, the permit requires RDC to submit a Materials Containment Plan ("MCP"), or written documentation showing an MCP is not needed, to the Division within ninety (90) days after the effective date of this permit. The MCP, or equivalent, due by May 1, 1994, has not been received by the Division as of the date of this NOV&CDO.

21. In Part I.A.3, the permit requires RDC to submit an implementation plan to the Division for achieving compliance with final limitations for cadmium, copper, silver, and zinc. This plan, due June 1, 1994, has not been received by the Division as of the date of this NOV&CDO.

22. In Part I.F.2, the permit requires RDC to use the analytical method that can measure the lowest detected limit for that parameter. The lowest method detection limit the permit

specifies for cadmium is 0.0003 mg/l, and for silver is 0.0002 mg/l.

23. Analytical laboratory reports attached to DMRs submitted for March, April, May, July, August, September, October, November, and December, 1994, and January, February, and March, 1995 showed detection limits for cadmium as 0.002 mg/l.

24. Analytical laboratory reports attached to DMRs submitted for March, April, May, June, July, August, September, October, November, and December, 1994, and January, February, March, April, and May, 1995 showed detection limits for silver as 0.001 mg/l or 0.01 mg/l.

25. In duplicate letters dated April 6, 1994, and remailed via certified mail on May 5, 1994, Certified Mail Numbers P 846 812 339 (to Wayne Webster) and P 846 812 340 (to David L. Sell), the Division requested designation or confirmation of the legal contact named in the permit and documentation of RDC's corporate structure within fourteen (14) days of receipt of the letter. As of the issuance date of this NOV&CDO, RDC has not submitted a response to these letters.

26. In Part II.B.2, the permit requires RDC to provide the Division, within a reasonable time, such information as was requested in the letters described in paragraph 25, to determine whether a cause to modify, revoke and reissue, or terminate this permit exists.

27. On January 18, 1994, the Division issued an NOV&CDO to RDC alleging effluent limit, sampling, and reporting violations of the permit, violations of the Water Quality Control Act, and failure to comply with the CDO issued on June 29, 1993. A copy of the 1994 NOV&CDO is attached as Exhibit A and incorporated herein by reference.

28. Item 1 of the 1994 CDO ordered RDC to "immediately take whatever measures necessary to cease and desist violating the Water Quality Control Act, 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), the permit, and regulations promulgated thereto." These "Findings of Fact" supporting issuance of this NOV&CDO demonstrate this requirement has not been fulfilled.

29. Item 2 of the 1994 CDO ordered RDC to submit "a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance," in writing, within 15 days after issuance of that order. This "Measures to Comply" statement was due on or about February 2, 1994. The January 28, 1994, response letter received from David L. Sell promised that "As per the Order [CDO], a more detailed response will be made outlining the measures that have been taken and will be taken to maintain compliance." This statement has not been received by the Division as of the date of this NOV&CDO.

30. Item 4 of the 1994 CDO ordered RDC to submit "copies of all individual analytical results for each parameter listed in paragraph 4 of the Findings of Fact for each month a permit

violation has been alleged" within 30 days after issuance of that order. The individual analytical results, due to the Division on or about February 18, 1994, have not been received by the Division as of the date of this NOV&CDO.

31. The Dolores River is "state waters" as defined by 25-8-103(19), C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.).

32. Outfall 002 constitutes a "point source" as defined by 25-8-103(14), C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.).

#### NOTICE OF VIOLATION

You are hereby notified that the facts stated above constitute violations of Part I.A of the permit as follows:

The 30-day average effluent concentrations of Total Recoverable Lead of 0.013 mg/l in December 1993, and 0.014 mg/l in January 1994, exceed the 30-day average concentration limitation in the effective permit of 0.009 mg/l.

The 30-day average effluent concentration of Total Recoverable Lead of 0.065 mg/l in July 1994, exceeds the 30-day average concentration limitation in the permit of 0.0099 mg/l.

The daily maximum effluent concentration of Total Recoverable Lead of 0.02 mg/l in December 1993, and January 1994, exceeds the daily maximum concentration limitation in the effective permit of 0.018 mg/l.

The 30-day average effluent loading of Total Recoverable Silver of 0.0113 lbs/day in January 1994, exceeds the 30-day average loading limitation in the effective permit of 0.0081 lbs/day.

The daily maximum effluent loading of Total Recoverable Silver of 0.022 lbs/day in January 1994, exceeds the daily maximum loading limitation in the effective permit of 0.016 lbs/day.

The 30-day average effluent concentration of Total Recoverable Silver of 0.0055 mg/l in October 1995, exceeds the 30-day average concentration limitation in the effective permit of 0.0001 mg/l.

The 30-day average effluent concentrations of Total Recoverable Zinc of 1.63 mg/l in March 1994, and 0.61 mg/l in May 1994, exceed the interim 30-day average concentration limitation in the permit of 0.44 mg/l.

The 30-day average effluent concentrations of Total Recoverable Zinc of 0.95 mg/l in March 1995, 0.57 mg/l in April 1995, 0.675 mg/l in May 1995, 7.02 mg/l in June 1995, 2.85 mg/l in July 1995, 0.282 mg/l in August 1995, 0.37 mg/l in September 1995, and 0.275 mg/l in October 1995, exceed the final 30-day average concentration limitation in the permit of 0.237 mg/l.

The daily maximum effluent concentrations of Total Recoverable Zinc of 2.03 mg/l in March 1994, and of 0.91 mg/l in May 1994, exceed the interim daily maximum concentration limitation in the permit of 0.88 mg/l.

The 30-day average effluent concentrations of Total Recoverable Cadmium of 0.003 mg/l in March 1995, 0.0035 mg/l in April 1995, 0.0065 in May 1995, 0.045 mg/l in June 1995, 0.0125 in July 1995, and 0.0025 mg/l in September 1995, exceed the final 30-day average concentration limitation in the permit of 0.0004 mg/l.

The daily maximum effluent concentration of Total Recoverable Cadmium of 0.02 mg/l in October 1994, exceeds the interim daily maximum concentration limitation in the permit of 0.007 mg/l.

The 30-day average effluent concentration of Total Recoverable Copper of 0.032 mg/l in June 1994, exceeds the interim 30-day average concentration limitation in the permit of 0.03 mg/l.

The maximum effluent pH of 9.08 s.u. in March 1994, exceeds the maximum limitation in the permit of 9.0 s.u.

The statistically significant difference in lethality between the control and the 24.3% effluent concentration for the First Quarter 1994, Chronic WET Test using *ceriodaphnia dubia* fails to meet the minimum concentration limitation in the permit of greater than 25%.

You are further notified that the facts stated above constitute violations of Part I.B.1. of the permit which states in relevant part:

In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A1, the permittee shall monitor all effluent parameters at the following frequencies...

<u>Effluent Parameter</u>	<u>Measurement Frequency</u>
Flow, MGD	Daily
Total Suspended Solids, mg/l	Weekly
Oil and Grease, mg/l	Weekly
pH, s.u.	Daily



TDS [Total Dissolved Solids], mg/l	Quarterly
Total Recoverable Cadmium, mg/l*	Weekly
Total Recoverable Copper, mg/l*	Weekly
Total Recoverable Lead, mg/l*	Weekly
Total Recoverable Silver, mg/l*	Weekly
Total Recoverable Zinc, mg/l*	Weekly

\* This parameter is subject to 'Noncompliance Notification' requirements of Part II.A.3.b)(iv) of this permit.

You are further notified that the facts stated above constitute violations of Part II.A.3.b)(iv) of the permit which states in relevant part:

The permittee shall report the following instances of noncompliance orally within twenty-four (24) hours from the time the permittee becomes aware of the noncompliance, and shall mail to the Division a written report within five (5) days after becoming aware of the noncompliance:

- (iv) Daily maximum violations for any toxic pollutants or hazardous substances limited by PART I.A. of this permit and specified as requiring 24 hour notification.

You are further notified that the facts stated above constitute violations of Part II.A.3.c) of the permit which states in relevant part:

The permittee shall report all other instances of non-compliance which are not required to be reported within 24-hours at the time the Discharge Monitoring Reports are submitted. The reports shall contain the information listed in sub-paragraph (a) of this section.

You are further notified that the facts stated above constitute violations of Part I.B.3(b) of the permit which states in relevant part:

The permittee must provide written notification of the failure of a WET test to the Division, along with a statement as to whether a Preliminary Toxicity Investigation ("PTI")/Toxicity Identification Evaluation ("TIE") or accelerated testing is being performed...Notification must be received by the Division within 21 calendar days of the demonstration of chronic WET in the routine required test. "Demonstration"...means no later than the last day of the laboratory test.

You are further notified that the facts stated above constitute violations of Part I.B.3(d) of the permit which states in relevant part:

The results of the PTI/TIE investigation are to be received by the Division within 120 days of the demonstration of chronic WET in the routine test, as defined above, or if accelerated testing is performed, the date the pattern of toxicity is demonstrated. A status report is to be provided to the Division at the 30, 60 and 90 day points of the PTI/TIE investigation.

Within 90 days of the determination of the toxicant or no later than 210 days after demonstration of toxicity, whichever is sooner, a control program is to be developed and received by the Division. The program shall set down a method and procedure for elimination of the toxicity to acceptable levels.

You are further notified that the facts stated above constitute violations of Part I.B.2 of the permit which states in relevant part:

Reporting of the data gathered in compliance with Part I.B.1 shall be on a monthly basis. Monitoring results shall be summarized for each month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The forms shall be mailed to the agencies listed below so they are received no later than the 28th day of the following month.

You are further notified that the facts stated above constitute violations of Part I.E.1 of the permit which states in relevant part:

Pursuant to Sections 6.9.3 (5) and (6)(b) of the Regulations for the State Discharge Permit System, the permittee is required to submit a Materials Containment Plan. Such a plan shall be submitted to the Permits and Enforcement Section, Water Quality Control Division within ninety (90) days after the effective date of this permit and must be implemented.

You are further notified that the facts stated above constitute violations of Part I.A.3 of the permit which states in relevant part:

The permittee shall achieve compliance with the effluent limitations of Part I.A.1, effective February 1, 1995, in accordance with a schedule of compliance approved by the Water Quality Control Division.

The permittee shall submit to the Division by June 1, 1994, an implementation plan to achieve compliance with the final limitations for cadmium, copper, silver and zinc.

You are further notified that the facts stated above constitute violations of Part I.F.2 of the permit which states in relevant part:

**The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter...**

The present lowest method detection limits for specific parameters (which have limitations which are, in some cases, less than or equal to the detection limit) are as follows:

Cadmium	0.0003 mg/l
Silver	0.0002 mg/l

You are further notified that the facts stated above constitute violations of Part II.B.2 of the permit which states in relevant part:

The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit.

You are further notified that the facts stated above constitute violations of Items 1, 2, and 4 of the CDO issued January 18, 1994.

#### CEASE AND DESIST ORDER

Based upon the foregoing Findings of Fact and Notice of Violation, and pursuant to the provisions of 25-8-605, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), I hereby order you to:

1. immediately take whatever measures necessary to cease and desist violating the Water Quality Control Act, 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), the permit, and regulations promulgated thereto;
2. submit to the Division, in writing, within 15 days after issuance of this order, a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance with paragraph 1 of this order;
3. submit to the Division, in writing, within 10 days after issuance of this order, a statement of your intent to comply herewith;

4. submit to the Division, within 30 days after issuance of this order, the delinquent items enumerated in paragraphs 10, 14, 16, 19, 20, 21, 25, and 30 of the Findings of Fact;

5. submit to the Division, within 10 days after issuance of this order, a copy of a written letter to your analytical laboratory indicating that beginning immediately, RDC's effluent samples are to be analyzed using the lowest detection limit for each parameter, in compliance with the permit; and

6. initiate a WET PTI/TIE and/or accelerated WET testing within 7 days after issuance of this order.

Pursuant to section 25-8-603, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), you are required to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Section 603 also provides that the recipient of a Notice of Violation may request the Division to conduct a hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division. Both the answer and the request for hearing, if any, shall be filed no later than 30 days after issuance of this order. The filing of an answer does not constitute a request for hearing. Absent such a request, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent proceeding. You are also advised that any person who violates any provision of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), or any provision of 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.) or any final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than \$10,000 per day for each during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made in violation of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.), or in violation of any Cease and Desist Order or Clean-Up Order issued by the Division. You are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters.

For further clarification of the rights of recipients of Notices of Violation, including the potential imposition of penalties and possible criminal liability, you are advised to consult the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1993 Supp.)

Issued at Denver, Colorado, this 26<sup>th</sup> day of January, 1996.

COLORADO DEPARTMENT OF PUBLIC HEALTH  
AND ENVIRONMENT  
Division of Administration

A handwritten signature in dark ink, appearing to read "J. David Holm", is written over a horizontal line.

J. David Holm  
Director  
Water Quality Control Division

BEFORE THE DEPARTMENT OF HEALTH

DIVISION OF ADMINISTRATION

STATE OF COLORADO

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NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

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IN THE MATTER OF:     RICO DEVELOPMENT CORPORATION  
                             CDPS PERMIT NO. CO-0029793  
                             DOLORES COUNTY, COLORADO

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TO:   Rico Development Corporation

Pursuant to the authority vested in the Division of Administration of the Colorado Department of Health ("the Division") by 25-8-301 to 308, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), which authority has been delegated to me by the Executive Director of the Department, I hereby make the following Findings of Fact and issue the following Notice of Violation and Cease and Desist Order:

FINDINGS OF FACT

1. Rico Development Corporation ("RDC") operates the Rico project, which is an inactive, underground metals mine ("the mine") in Rico, Colorado.
2. The mine is the subject of Colorado Discharge System Permit No. CO-0029733 ("the permit"), which was effective on June 13, 1988 and has been extended past its expiration date of December 31, 1992 pending permit renewal.
3. Under the terms and conditions of the permit, wastewater associated with the St. Louis tunnel is authorized to be discharged, following treatment, from outfall 002 into the Dolores River.
4. Pursuant to the requirements of the permit, RDC is required to sample and analyze the effluent being discharged at outfall 002 at least monthly. RDC submitted monthly Discharge Monitoring Reports ("DMRs") to the Division regarding the levels of pollutants in the effluent which included the following data:

Reporting Period	Pollutant	Reported Concentration	Permit Limit
8/93	Total Recoverable Silver, 30-day avg.	0.1349 lbs/day	0.0081 lbs/day
8/93	Total Recoverable Silver, daily max.	0.2452 lbs/day	0.016 lbs/day
9/93	Total Recoverable Silver, 30-day avg.	0.011 lbs/day	0.0081 lbs/day
5/93	Total Recoverable Zinc, 30-day avg.	17.6 lbs/day	9.5 lbs/day
6/93	Total Recoverable Zinc, 30 day avg.	62.5 lbs/day	9.5 lbs/day
6/93	Total Recoverable Zinc, daily max.	76 lbs/day	10 lbs/day
7/93	Total Recoverable Zinc, 30-day avg.	15.8 lbs/day	9.5 lbs/day
10/93	Total Recoverable Zinc, 30-day avg.	11.8 lbs/day	9.5 lbs/day
6/93	Total Recoverable Cadmium, 30-day avg.	0.3 lbs/day	0.12 lbs/day
6/93	Total Recoverable Cadmium, daily max.	0.40 lbs/day	0.24 lbs/day
10/93	Total Suspended Solids, 30-day avg.	24 mg/l	20 mg/l
10/93	Total Suspended Solids, daily max.	38 mg/l	30 mg/l

5. In Part I.B.1, the permit requires sampling and analyses for Total Recoverable Silver, Total Recoverable Zinc, Total Recoverable Cadmium, Total Recoverable Lead, and Total Recoverable Copper twice per month. As documented on RDC's November, 1993, DMRs, discharge occurred throughout the month, yet these analyses were performed only once.

6. The permit also requires quarterly acute Whole Effluent Toxicity ("WET") testing of effluent from outfall 002. RDC submitted quarterly reports to the Division which indicated second and third quarter, 1993, failures of the acute WET test for *ceriodaphnia dubia*, and a second quarter, 1993, failure of the acute WET test for *pimephales promelas*, or fat-head minnows.

7. In Part I.B.4., the permit requires acute WET test failures to be verbally reported within 24 hours, and in writing within 5 days of becoming aware of the toxicity. In all of the above instances, the Division was not notified until receipt of the DMRs.

8. The second quarter WET tests were completed by July 3, 1993; the lab report signed by July 16, 1993; but the Division was not notified of the test failures until receipt of the DMRs on July 30, 1993.

9. The third quarter WET tests were completed by August 28, 1993; the lab report signed by September 3, 1993; but the Division was not notified of the test failure until receipt of the DMRs on September 30, 1993.

10. In Part I.B.4., the permit requires RDC to begin accelerated WET testing of the discharge within 7 days of becoming aware of the toxicity.

11. In a letter dated August 30, 1993, the Division instructed RDC to commence accelerated WET testing for both species in response to the second quarter WET test failures.

12. The first discharge effluent sample for the required accelerated testing was not collected until October 12, 1993.

13. On June 29, 1993, the Division issued a Notice of Violation and Cease and Desist Order ("NOV&CDO") to RDC alleging effluent violations of the permit. A copy of the NOV&CDO is attached as Exhibit A and incorporated herein by reference.

14. Item 2 of the CDO ordered RDC to submit "a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance," in writing, within 15 days after issuance of that order. This "Measures to Comply" statement, due on or about July 15, 1993, has not been received by the Division.

15. Item 3 of the CDO ordered RDC to submit, "in writing, within 10 days after issuance of this order, a statement of your intent to comply herewith." This statement was due on or about July 10, 1993. The statement accepted as the "Intent to Comply" was received by the Division on August 9, 1993.

16. On May 5, 1993, the District Engineer conducted the Annual Inspection of RDC's wastewater treatment facilities. During this inspection, as documented in his June 18, 1993, letter to RDC, the District Engineer observed:

"The surcharged manhole allowing untreated wastewater to enter the old cyanide heap leach basin may be contaminating groundwater. There are torn sections of this liner indicating it is not fit to hold wastewater. Additionally, the basin water elevation appears constant indicating wastewater is leaving at the same rate that it is entering. This bypass [of the wastewater treatment system] must be eliminated immediately."

17. In a letter dated June 18, 1993, Certified Mail Number P 189 604 392, the District Engineer cited violations of the Colorado Water Quality Control Act discovered during the annual inspection performed on May 5, 1993. A written response was requested within 20 days of receipt of that letter, providing RDC's plan to bring this wastewater treatment facility into compliance.



18. In a letter dated November 29, 1993, Certified Mail Number P 189 604 420, the District Engineer documented that he had not received the response requested by the June 18, 1993, letter. He extended the response time by another 20 days. As of the date of issuance of this NOV, the concerns outlined in the June 18, 1993, letter have not been addressed.

19. In Part II.B.2., the permit requires the permittee to provide the Division, within a reasonable time, such information as requested in the June 18, 1993, letter mentioned above to determine compliance with the permit.

20. The Dolores River is "state waters" as defined by 25-8-103(19), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

21. Outfall 002 constitutes a "point source" as defined by 25-8-103(14), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

### NOTICE OF VIOLATION

You are hereby notified that the facts stated above constitute violations of Part I.A of the permit as follows:

The 30-day average loading of total recoverable silver in the effluent of 0.1349 lbs/day in August 1993, and 0.011 lbs/day in September 1993, exceed the 30-day average loading allowed in the permit of 0.0081 lbs/day.

The daily maximum loading of total recoverable silver in the effluent of 0.2452 lbs/day in August 1993, exceeds the daily maximum loading allowed in the permit of 0.016 lbs/day.

The 30-day average loading of total recoverable zinc in the effluent of 17.6 lbs/day in May 1993, 62.5 lbs/day in June 1993, 15.8 lbs/day in July 1993, and 11.8 lbs/day in October 1993, exceed the 30-day average loading allowed in the permit of 9.5 lbs/day.

The daily maximum loading of total recoverable zinc in the effluent of 76 lbs/day in June 1993, exceeds the daily maximum loading allowed in the permit of 19 lbs/day.

The 30-day average loading of total recoverable cadmium in the effluent of 0.3 lbs/day in June 1993, exceeds the 30-day average loading allowed in the permit of 0.12 lbs/day.

The daily maximum loading of total recoverable cadmium in the effluent of 0.40 lbs/day in June 1993, exceeds the daily maximum loading allowed in the permit of 0.24 lbs/day.

The 30-day average concentration of total suspended solids in the effluent of 24 mg/l in October 1993, exceeds the 30-day average concentration allowed in the permit of 20 mg/l.

The daily maximum concentration of total suspended solids in the effluent of 38 mg/l in October 1993, exceeds the daily maximum concentration allowed in the permit of 30 mg/l.

You are further notified that the facts stated above constitute violations of Part I.B.1. of the permit which states in relevant part:

"In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Section A, the permittee shall monitor all effluent parameters at the following frequencies...

<u>Effluent Parameter</u>	<u>Measurement Frequency</u>
Total Recoverable Cadmium, lbs/day	2 X Monthly
Total Recoverable Copper, mg/l	2 X Monthly
Total Recoverable Lead, mg/l	2 X Monthly
Total Recoverable Silver, lbs/day	2 X Monthly
Total Recoverable Zinc, lbs/day	2 X Monthly"

You are further notified that the facts stated above constitute violations of Part I.B.4. of the permit which states in relevant part:

"If toxicity in excess of the acute toxicity level in Part I.A.2. is detected in any acute WET test conducted in accordance with the previous section, the permittee shall notify the Division verbally within 24 hours and in writing within 5 days of becoming aware of the toxicity. Within 7 days of becoming aware of the toxicity, the permittee shall then begin accelerated testing of the discharge."

You are further notified that the facts stated above constitute violations of Items 2 and 3 of the CDO issued June 29, 1993.

You are further notified that the facts stated above constitute violations of Part II.B.2. of the permit which states in relevant part:

"The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit."

### CEASE AND DESIST ORDER

Based upon the foregoing Findings of Fact and Notice of Violation, and pursuant to the provisions of 25-8-605, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), I hereby order you to:

1. immediately take whatever measures necessary to cease and desist violating the Water Quality Control Act, 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), the Permit, and regulations promulgated thereto;
2. submit to the Division, in writing, within 15 days after issuance of this order, a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance with paragraph 1 of this order;
3. submit to the Division, in writing, within 10 days after issuance of this order a statement of your intent to comply herewith;
4. submit to the Division, within 30 days after issuance of this order, copies of all individual analytical results for each parameter listed in paragraph 4 of the Findings of Fact for each month a permit violation has been alleged; and
5. submit to the Division, in writing, within 10 days after issuance of this order, the notification requested in the District Engineer's June 18, and November 29, 1993, letters, of your course of action to bring this wastewater treatment facility into compliance.

Pursuant to section 25-8-603, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), you are required to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Section 603 also provides that the recipient of a Notice of Violation may request the Division to conduct a hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division. Both the answer and the request for hearing, if any, shall be filed no later than 30 days after issuance of this order. The filing of an answer does not constitute a request for hearing. Absent such a request, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent proceeding. You are also advised that any person who violates any provision of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or any provision of 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.) or any final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than \$10,000 per day for each during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made in violation of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or in violation of any Cease and Desist Order or Clean-Up Order issued by the Division. You are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may

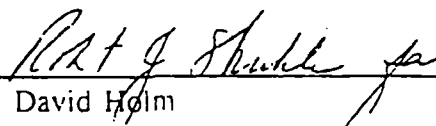
cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters.

For further clarification of the rights of recipients of Notices of Violation, including the potential imposition of penalties and possible criminal liability, you are advised to consult the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.)

Issued at Denver, Colorado, this 18th day of January, 1994.

COLORADO DEPARTMENT OF HEALTH  
Division of Administration

  
\_\_\_\_\_  
J. David Holm  
Director  
Water Quality Control Division

BEFORE THE DEPARTMENT OF HEALTH

DIVISION OF ADMINISTRATION

STATE OF COLORADO

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NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

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IN THE MATTER OF:     RICO DEVELOPMENT CORPORATION  
                            -- CDPS PERMIT NO. CO-0079793  
                            DOLORES COUNTY, COLORADO

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TO:   Rico Development Corporation

Pursuant to the authority vested in the Division of Administration of the Colorado Department of Health ("the Division") by 25-8-301 to 308, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), which authority has been delegated to me by the Executive Director of the Department, I hereby make the following Findings of Fact and issue the following Notice of Violation and Cease and Desist Order:

FINDINGS OF FACT

1. Rico Development Corporation ("Rico") operates the Rico project, which is an inactive, underground metals mine ("the mine") in Rico, Colorado.
2. The mine is the subject of Colorado Discharge System Permit No. CO-0029733 ("the permit"), which was effective on June 13, 1988 and has been extended past its expiration date of December 31, 1992 pending permit renewal.
3. Under the terms and conditions of the permit, wastewater associated with the St. Louis tunnel is authorized to be discharged, following treatment, from outfall 002 into the Dolores River.
4. Pursuant to the requirements of the Permit, Rico is required to sample and analyze the effluent being discharged at outfall 002 at least monthly. Rico submitted monthly reports to the Division regarding the levels of pollutants in the effluent which included the following data:

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Reporting Period	Pollutant	Reported Concentration
11/92	Total Recoverable Silver 30-day average	0.0134 lbs/day
11/92	Total Recoverable Silver daily maximum	0.020 lbs/day
12/92	Total Recoverable Silver 30-day average	0.0093 lbs/day
12/92	Total Recoverable Silver daily maximum	0.018 lbs/day
6/92	Total Recoverable Zinc 30-day average	14.5 lbs/day
6/92	Total Recoverable Cadmium 30-day average	0.33 lbs/day
6/92	Total Recoverable Cadmium daily maximum	0.60 lbs/day
8/92	Total Recoverable Cadmium 30-day average	0.08 lbs/day
9/92	Total Recoverable Lead 30-day average	0.015 mg/l
9/92	Total Recoverable Lead daily maximum	0.03 mg/l
3/92	Total Recoverable Copper 30-day average	0.035 mg/l
3/92	Total Recoverable Copper daily maximum	0.075 mg/l

5. The Dolores River is "state waters" as defined by 25-8-103(19), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

7. Outfall 002 constitutes a "point source" as defined by 25-8-103(14), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

### NOTICE OF VIOLATION

You are hereby notified that the facts stated above constitute violations of Part I.A of the Permit as follows:

The 30-day average loading of total recoverable silver in the effluent of 0.0134 lbs/day in November 1992 and 0.0093 lbs/day in December 1992 exceed the 30-day average loading allowed in the permit of 0.0081 lbs/day.

The daily maximum loading of total recoverable silver in the effluent of 0.020 lbs/day in November 1992 and 0.018 lbs/day in December 1992 exceed the daily maximum loading allowed in the permit of 0.016 lbs/day.

The 30-day average loading of total recoverable zinc in the effluent of 14.5 lbs/day in June 1992 exceeds the 30-day average loading allowed in the permit of 9.5 lbs/day.

The 30-day average loading of total recoverable cadmium in the effluent of 0.33 lbs/day in June 1992 exceeds the 30-day average loading allowed in the permit of 0.12 lbs/day.

The daily maximum loading of total recoverable cadmium in the effluent of 0.60 lbs/day in June 1992 exceeds the daily maximum loading allowed in the permit of 0.24 lbs/day.

The 30-day average loading of total recoverable cadmium in the effluent of 0.08 lbs/day in August 1992 exceeds the 30-day average loading allowed in the permit of 0.076 lbs/day.

The 30-day average concentration of total recoverable lead in the effluent of 0.015 mg/l in September 1992 exceeds the 30-day average concentration allowed in the permit of 0.009 mg/l.

The daily maximum concentration of total recoverable lead in the effluent of 0.03 mg/l in September 1992 exceeds the daily maximum concentration allowed in the permit of 0.018 mg/l.

The 30-day average concentration of total recoverable copper in the effluent of 0.035 mg/l in March 1992 exceeds the 30-day average concentration allowed in the permit of 0.03 mg/l.

The daily maximum concentration of total recoverable copper in the effluent of 0.075 mg/l in March 1992 exceeds the daily maximum concentration allowed in the permit of 0.06 mg/l.

### CEASE AND DESIST ORDER

Based upon the foregoing Findings of Fact and Notice of Violation, and pursuant to the provisions of 25-8-605, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), I hereby order you to:

1. immediately take whatever measures necessary to cease and desist violating the Water Quality Control Act, 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), the Permit, and regulations promulgated thereto;
2. submit to the Division, in writing, within 15 days after issuance of this order, a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance with paragraph 1 of this order;
3. submit to the Division, in writing, within 10 days after issuance of this order a statement of your intent to comply herewith;

Pursuant to section 25-8-603, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), you are required to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Section 603 also provides that the recipient of a Notice of Violation may request the Division to conduct a hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division. Both the answer and the request for hearing, if any, shall be filed no later than 30 days after issuance of this order. The filing of an answer does not constitute a request for hearing. Absent such a request, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent proceeding. You are also advised that any person who violates any provision of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or any provision of 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.) or any final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than \$10,000 per day for each during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made in violation of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or in violation of any Cease and Desist Order or Clean-Up Order issued by the Division. You are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters.



For further clarification of the rights of recipients of Notices of Violation, including the potential imposition of penalties and possible criminal liability, you are advised to consult the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.)

Issued at Denver, Colorado, this 29th day of June, 1993.

.. COLORADO DEPARTMENT OF HEALTH  
Division of Administration

J. David Holm  
J. David Holm  
Director  
Water Quality Control Division